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CIA Uses Agee Case in War on Freedom of Information Act

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The strange case of Philip Agee has become one of the Central Intelligence Agency's prime exhibits in its campaign against the Freedom of Information Act.

A former CIA officer who resigned from the agency in 1968, Agee, 45, now is one of its most outspoken enemies. Since he resigned, he has made a career of exposing the names of CIA personnel and attacking the agency's methods. He also is entitled like anyone else to ask for CIA documents under the Freedom of Information Act.

"It is frankly disgraceful that we are required to assist him in his endeavors," CIA Deputy Director Frank Carlucci told a House subcommittee recently in pleading for a change in the legislation.

"Modification of the Freedom of Information Act makes sense," Sen. Malcolm Wallop (R-Wyo.) asserted in co-sponsoring a CIA bill that would put most of the agency's operational and technical records beyond the reach of the law.

"Congress," Wallop declared, "Never intended that the American taxpayers should pay to provide

Philip Agee with four full-time research assistants within the CIA, but that is exactly what happened under the law in 1978."

The implication is that such requests no longer would be permitted if Congress would give the CIA the extraordinary exemption it is seeking.

But the bill would do nothing of the sort. Instead, it would block freedom of information requests from newspapers, historians, civil libertarians and just about everyone and anyone except individuals such as Philip Agee.

Under the CIA proposal, the agency's operational and technical files would be immune from disclosure, except to Americans seeking records about themselves. The CIA still would have to entertain those requests. And that is all that Agee, an American citizen, has asked for: records about himself.

"We do not seek a total exemption," Carlucci said in his House testimony. He said the CIA had constructed "our amendment in such a manner as to keep all of our files accessible to American citizens and permanent resident aliens requesting information on themselves, subject to existing FOIA exemptions."

So far, Agee has gotten very little. On Nov. 9, 1977, he asked the CIA, among other agencies, for copies of "all files and records . . . that pertained to, referred to, or in any way related to himself." Last November, more than two years later, he filed suit in Federal court here under the Freedom of Information Act, saying that he had yet to get a single piece of paper from the CIA beyond a letter acknowledging receipt of his request.

Now, according to court records, Agee wants to drop the lawsuit. From its rhetoric on the issue, it appears that the CIA would be only too happy to accommodate him. But the government is expected to try to keep the case alive in order to press a counterclaim it filed against Agee last month for his anti-CIA writings.

CIA officials refused to discuss Agee's suit, but according to the agency's annual report to Congress last

year, the CIA had "already expended four man-years"—the equivalent of four men working a year—on Agee's request and might spend as much as "nine man years of labor" by the time it was finished.

"Thus," CIA Deputy Director for Administration Don I. Wortman reported on April 2, 1979, "The requester [Agee] is not only succeeding in tying up the time of agency experts, but, in addition, can be expected to use whatever information is ultimately released in his efforts to discredit the agency and destroy its operations."

The suggestion that the freedom of information law enables Agee to pry damaging secrets from the CIA willy-nilly is not supported by the record. The law already allows the CIA to withhold documents that would disclose sources and methods or endanger national security. And CIA Deputy Director Carlucci asserted last year, in a letter to the Office of Management and Budget, that the information the agency releases under the law "is more often than not of little use to the recipient."

In addition, Agee, who currently lives in West Germany, is the subject of "an intensive counterintelligence investigation," court records show. The Freedom of Information Act permits withholding investigatory records on various grounds.

According to one of Agee's lawyers, Melvin Wulf of New York, the CIA has given them nothing beyond a two-inch-thick personnel file that was turned over two weeks ago.

"They told us at a status conference [on the lawsuit] that that . . . was about 10 percent of what they had—which means they might be coming up with about 20 inches of documents," Wulf recalls. "That doesn't sound like nine man-years to me. . . . They've been working the Agee angle in order to destroy the Freedom of Information Act."

Justice Department lawyers who are defending the CIA and other agencies in the Agee case filed a counterclaim against him Feb. 5 in an effort to confiscate the profits of two controversial books he helped write that exposed the names of CIA agents in Western Europe and Africa.

Encouraged by a Supreme Court decision expanding the CIA's censorship powers, government attorneys also are seeking an injunction that would require Agee to submit all his future writings to the CIA for review.

The government says it needs the freedom of information suit as a vehicle to make its case.

"Plaintiff [Agee] has resided abroad since the late 1960s and he has not been subject to the jurisdiction of any United States court," the Justice Department said in a memo filed with U.S. District Court Judge Gerhard A. Gesell. "Now, through his own actions, this court has jurisdiction over the plaintiff. Thus, for the first time in nearly 11 years, the United States may assert claims against Philip Agee."

The American Civil Liberties Union has joined in the litigation, arguing that Agee has the right to drop his own lawsuit. A hearing has been set for March 27.

The outcome is uncertain, but it is clear that the government is more interested in keeping Agee's widely deplored Freedom of Information Act request alive than Agee is. The CIA has found it useful in more ways than one.